

REMARKS/ARGUMENTS

The Office Action dated December 1, 2004 has been received and its contents carefully considered. Claims 4-17 and 21-28 are pending. Claims 4-17 and 21-28 have been rejected. Claims 4 and 21 have been cancelled. Claims 8, 9, 10, 14, 15, 16, 17, 22, 23, 27 and 28 have been amended.

Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

CLAIM OBJECTIONS

Claims 10, 14-17, 22-23, 27-28 were objected to because of informalities. The aforementioned claims have been amended accordingly. It is believed that the claims are in compliance.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 5-7, 10-17 and 22-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dutton, et al. in view of Hatai and further in view of Buchwald, et al. Without conceding the propriety of the rejection independent claims 10 and 27-28 have been amended. It is respectfully submitted that Dutton, et al. in view of Hatai and further in view of Buchwald, et al. do not teach at least a predictive warning system for incubator gas sensor failure comprising “means for holding a gas concentration and a gas sensor temperature constant over a previous hour prior to performing the normalizing step” in combination with the additionally claimed features as recited in claims 10 and 28. It is also respectfully submitted that Dutton, et al., in view of Hatai and further in view of Buchwald, et al. do not teach at least a method of predicting failure of gas sensors in an incubator environment comprising “holding a gas concentration and a

gas sensor temperature constant over a previous hour prior to performing the normalizing step”
in combination with the additionally claims features as recited in claim 27.

The Examiner acknowledges that Dutton, et al. in combination with Hatai and Buchwald, et al., fails to teach holding a gas concentration and a gas sensor temperature constant over a previous hour prior to performing a normalizing step (See Office Action mailed December 1, 2004, page 7, paragraph 2). In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Therefore, since the prior art lacks all the claimed features, Dutton, et al., alone or in combination with Hatai and Buchwald, et al., can not be said to teach or suggest the invention as recited in claims 10, 27 and 28. Hence, withdrawal of the rejection is respectfully requested.

Claims 5-7 depend from independent claim 27 and are patentable over the cited prior art for at least the same reasons as is claim 27.

Claims 11-17 depend ultimately from independent claim 27 and are patentable over the cited prior art for at least the same reasons as is claim 27.

Claims 11-17 depend ultimately from independent claim 10 and are patentable over the cited prior art for at least the same reasons as is claim 10.

Claims 22-26 depend from independent claim 28 and are patentable over the cited prior art for at least the same reasons as is claim 28.

Claims 4, 8, 9 and 21 were rejected under 35 USC 103(a) as being unpatentable over Dutton in view of Hatai and Buchwald, et al., and further in view of Capetanopoulos. Claims 4 and 21 have been cancelled. The subject matter thereof has been incorporated into

independent claims 27 and 28, respectfully. Claims 8-9 depend from independent claim 27.

Without conceding the propriety of the rejection, independent claims 27 and 28 have been amended. It is respectfully submitted that Dutton in view of Hatai and Buchwald, et al., et al., and further in view of Capetanopoulos do not teach at least “holding a gas concentration and a gas sensor temperature constant over a previous hour prior to performing the normalizing step,” for instance, as recited in claim 27.

The Examiner concedes that Dutton in combination with Hatai and Buchwald, et al., fail to teach “holding a gas concentration and a gas sensor temperature constant over a previous hour prior to performing the normalizing step” as recited, for example, in claim 27. The Examiner then attempts to combine Capetanopoulos. Capetanopoulos discloses a method of calibrating and using a device for the determination of the concentration of an active gas in a mixture of gases wherein the device incorporates a gas sensor and has a gas diffusion barrier means. In column 2, lines 56-57, a constant is calculated for the device at constant temperature and pressure for the active gas. The Examiner states that Capetanopoulos suggests that it is well known that gas sensor need various amounts of time to accurately reflect the conditions of the environment and therefore it would have been obvious to one of ordinary skill in the art to hold the gas concentration and temperature constant for whatever time is deemed necessary, such as one hour as recited, for instance, in claim 27, in order to stabilize the readings. However, the Examiner’s conclusions are believed to be more broad than the teachings of Capetanopoulos since the prior art is silent with regards to teaching holding the gas concentration and gas sensor temperature constant over a previous hour prior to performing the normalizing step, for instance, as recited in claim 27 and further in combination with the additionally recited features of claim 27. The cited prior art simply lacks support to obviate over the aforementioned features as recited, for example, in claim 27. Such a conclusion by the Examiner appears to be based upon hindsight

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which relies upon the benefit of applicants' disclosure. Therefore, since the prior art lacks all the claimed features, Dutton, alone or in combination with Hatai, Buchwald, et al., and Capetanopoulos, cannot be said to teach or suggest the invention as recited. Hence, withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. If it is believed that the application is not in condition for allowance the Examiner is requested to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

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